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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 76-116

MARION BUTLER STUART,
Appellant-Petitioner,
v.
RUTH M. BUTLER, et al.,
Appellee-Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondents in Opposition

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Brief in Opposition to Petition for Certiorari and "Motion to Vacate Judgment Below"

Preliminary

This case precisely fits the classic mold of cases which should be disposed of on summary judgment because a material allegation of the complaint is demonstrated to be both untrue and unprovable on discovery. In her complaint, plaintiff *alleged* that she had "no knowledge" in 1946 about the common stock which her father and brother acquired when Butler Packing Company, a partnership, was dissolved in 1946 and which she now asks the Court to

redistribute in part to her. In discovery, indeed in deposition testimony given and later corrected by plaintiff herself, she *admitted* not only that she knew of the existence of the stock in 1946 but also that her father repeatedly told her between 1946 and 1950 that her brother had been given stock and she had not. As soon as plaintiff's knowledge was exposed under oath, her only arguable basis for suspending the application of the statute of limitations and the doctrine of laches disappeared. Both the District Court and the Court of Appeals easily perceived as a matter of law that plaintiff waited more than twenty years too long to bring this suit to attempt to work a larger gift from her deceased father.

REASONS FOR DENYING THE WRIT

Statement

This is one of several actions, including two in the state courts of California and Nevada, by which petitioner MARION BUTLER STUART seeks to disturb, obstruct or alter the distribution of her late father's estate to the detriment of her mother, brother, half-brother, and her nieces and nephews. Petitioner, whose husband, Elbridge H. Stuart, is the grandson of the founder of Carnation Company and whose children are amply provided for by Stuart trusts, here demonstrates that she has ample resources to instruct her lawyers to attempt to carry her ill-motivated campaign all the way to this court of last resort.

The record in this case discloses that petitioner was well-treated and well-educated by her father and had a normal familial relationship with him until 1966. Then, at age 45, she became totally estranged from her father and never saw or spoke to him thereafter up to the date of his death, April 26, 1972. Shortly after his death, seemingly to vindicate her treatment of him in his last years, she launched her fusillade of litigation, including this case.

As the opinion of the District Court shows, the parties have diligently pursued discovery in this case and have put before the Court the reliable information available concerning the 1946 dissolution of Butler Packing Company which plaintiff seeks to redo Pet./Cert. App. C., p. 6). Although the Court was unable to precisely determine the respective interests of the partners in Butler Packing Company from the evidence, the Court was able to determine that your petitioner was fully advised about the dissolution of the partnership by her father in 1946 and that she was then fully competent and *sui juris*. So finding, upon your petitioner's own admissions, the Court properly held that this action was filed more than a quarter-century too late.

ARGUMENT

This case has absolutely no redeeming legal value. No important question of Federal law lurks here—in fact, in its legal determinations, the Court found and applied the limitation of actions law of the State of Washington in deciding this diversity case.

There are no special or important reasons for review of this case. There is no conflict in the decision of the Court of Appeals either with a decision of this Court of any lower Federal Court or in the application of the governing law of the State of Washington. Your petitioner does not suggest that any of the foregoing reasons for review applies here and none does.

Petitioner's argument that there has been a departure from the "accepted and usual course of judicial proceedings" in the lower courts is wholly specious. It is a patently desperate attempt to affix a Rule 19 label to a container whose product has no Rule 19 ingredients, and which is, indeed, a hollow vessel.

Her suggestion that the right to jury trial secured by the Seventh Amendment to the Constitution of the United States is somehow involved here underscores her inability to distinguish a genuine issue of material fact from her phantom pleaded issue

of lack of knowledge. And, further, it ignores the salutary admonition of Professor Moore that: "if the only question involved in the litigation is one of law and there is no dispute as to material issues of fact, there is no room for a contention by the losing party that the granting of a motion for summary judgment deprives it of a jury trial." *6 Moore's, Federal Practice*, § 56.06[2], pages 56-90, 56-91.

It is manifest from the petition and its all-consuming concern with "findings" of the courts below that petitioner blithely ignores this Court's long-standing admonition that it "do[es] not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227. In filing this petition, petitioner places herself squarely within the large majority of misguided certiorari seekers referred to by Chief Justice Taft in *Magnum Co. v. Coty*, 262 U.S. 159, 163:

> "The jurisdiction [of the Supreme Court to review cases by way of certiorari] was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that eighty per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ."

Furthermore, on the showing made here, the "Motion to Vacate the Judgment", which is apparently lodged in the "Conclusion" of the petition (Pet., p. 9), is neither timely nor properly coupled with the petition for certiorari. The cited "authority" for *summarily* vacating the judgment is suspect for two manifest reasons:

> (1) The cited case of *Allegheny Corporation v. Breswick*, 330 U.S. 812 is not found at 330 U.S. 812[1] nor are the "five subsequent cases summarily reversed on the authority thereof reported in 330 U.S. 812." None of the *per curiam* decisions or orders reported at 330 U.S. 812 either relates to writs of certiorari or remotely supports the motion to vacate the judgment.
>
> (2) "The five subsequent [Supreme Court] cases summarily reversed on the authority of [*Allegheny*] reported in 831 U.S. 791" (sic) either:
>
> (a) will be decided in about the year 2058 if the present system of numbering the United States Reports is followed, or
>
> (b) will never be decided if the United States Reports adopts a Second Series of Reports.

1. A case of this title is reported ten years later at 355 U.S. 415. It does not deal with summary motions to vacate but relates to vacation of a District Court judgment which ignored the mandate of the Supreme Court in an earlier opinion in the same case reported at 353 U.S. 151.

In either event, these undecided, unnamed cases lend no present comfort to the motion here advanced.

The five *per curiam* cases which follow at page 9 of the petition do not sanctify the motion to vacate the judgment. Three cases (*Franklin, White* and *Riss & Co.*) are simply *per curiam* opinions on *appeal*. The other two cases (*Rogers* and *Carter*) are desegregation cases where this Court granted certiorari to two Courts of Appeals which had clearly misconstrued United States Supreme Court decisions which articulated Federal law relating to school desegregation. They bear no factual resemblance to the situation presented by the moving party here.

Finally, while on occasion this Court has suggested that summary judgment procedures be used sparingly in conspiracy cases such as in complex anti-trust litigation (*Pollor*[2]), or racial discrimination cases (*Adickes*), the cases cited at page 5 of the petition, the rationale of the admonition is altogether inapposite here. The simple question resolved here was that this hoary state claim was not legally fit for adjudicating. As the Ninth Circuit held in a case followed by the District Court here (Pet./Cert. App.C., p. 9): Summary judgment "may be used effec-

2. At page 5 of her petition, petitioner cites *Pollor v. Columbia Broadcasting System*, 386 U.S. 464. We assume the intended reference is to *Poller v. Columbia Broadcasting System*, 368 U.S. 464.

tively . . . when the affirmative defense pleaded is the statute of limitations," *Dam v. General Electric Company*, 265 F.2d 612, 614 (9th Cir. 1958). This conclusion, respondent submits, is unassailable in logic or in law.

CONCLUSION

The petition presents no question worthy of review, no conflict and nothing novel. Respondents submit that it should be denied.

DATED: San Francisco, California, August 19, 1976.

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